

ORDINANCE NO. _____ Series 2009

**AN ORDINANCE ENACTING A NEW SECTION OF
CHAPTER 37 OF THE LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT CODE OF ORDINANCES [LMCO]
TO ESTABLISH FAIR LABOR STANDARDS FOR
TAXPAYER SUBSIDIZED PROJECTS**

**Primary Sponsors: Councilman Jim King and Councilman
Rick Blackwell Co-Sponsors: Councilwoman Mary Woolridge,
Councilman Dan Johnson, Councilwoman Vicki Aubrey Welch,
and Councilman Bob Henderson**

WHEREAS, the Metro Council of the Louisville/Jefferson County Metro Government (the Metro Council) has historically been requested to provide financial assistance to otherwise privately financed projects which would not be feasible without such assistance, and

WHEREAS, the Metro Council is from time to time requested to endorse financial assistance for private developers seeking public/private partnerships, public assistance or access to public assets, and

WHEREAS, Metro Louisville has a well trained, highly educated, diverse work force, and

WHEREAS, it is the will of the Metro Council that any public or private activity construction projects in Louisville Metro that receive substantial public funds or public tax subsidies such as tax increment financing, general obligations bonds and cash payments or that receive access to public assets or public assistance in a substantial amount provide opportunities for local contractors and local labor, and

WHEREAS, it is the will of the Metro Council that any taxpayer subsidized construction projects in Louisville Metro provide opportunities for minority owned

and female owned businesses based in Louisville Metro, and minority and female members of the workforce who reside in Louisville Metro; and

WHEREAS, it is the will of the Metro Council that any taxpayer subsidized projects in Louisville Metro provide opportunities for both union and non-union contractors that comply with all federal and state employment laws, and

WHEREAS, it is the will of the Metro Council that all workers employed on taxpayer subsidized projects receive competitive wages; and

WHEREAS, the current unemployment rate for construction workers residing within the Louisville area is estimated to be higher than the national seasonal unemployment rate for construction workers, and

WHEREAS, the provisions of the ordinance dealing with qualifying larger numbers of women and minorities for employment in connection with covered projects will be frustrated and rendered ineffective without also providing enhanced employment opportunities in Metro Louisville,

NOW THEREFORE, BE IT ORDAINED by the Louisville/Jefferson County Metro Council as follows:

SECTION I: A new Section of LMCO Chapter 37 is hereby enacted to read as follows:

TAXPAYER SUBSIDIZED PROJECTS

A. DEFINITIONS

CERTIFIED FEMALE OWNED BUSINESS: A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are female and legal residents of the United States. A female owned business enterprise shall be certified by the Metro Human Relations Commission or by any organization approved and designated by the Metro Human Relations Commission to certify the company to be female owned.

COVERED STRUCTURE: Any building or facility constructed as part of a Taxpayer Subsidized Project contemplated by this ordinance.

DEVELOPER: Any person or entity undertaking a Taxpayer Subsidized Project.

LOUISVILLE METROPOLITAN STATISTICAL AREA (MSA): As defined by the United States Census Bureau (currently comprising a 13 county area). For purposes of this ordinance, the term “MSA” shall include the entire county of all counties within the MSA and all counties contained in the region commonly known as the Louisville Labor Force Area.

MINORITY: Any legal resident of the United States having ethnic origin in the black racial groups of Africa; a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures; a person having ethnic origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, Korea, China, the Philippines, Malaysia, Hawaii, and Samoa; a person having origins in any of the original peoples of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States or Canada; or a person having origins in the Eskimo or Aleut peoples and who is recognized as such by either a tribe, tribal counsel, or a suitable authority in the community, which authority may be an educational institution, religious organization, or a federal or state agency.

CERTIFIED MINORITY OWNED BUSINESS: A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are minorities and legal residents of the United States. A minority owned business enterprise shall be certified by the Metro Human Relations Commission or by any organization approved and designated by the Metro Human Relations Commission to certify the company to be minority owned.

PREVAILING WAGE: The wages typically paid for services rendered by any particular profession or trade as determined pursuant to KRS 337.505 (1) and KRS 337.520 (3), (a), (b), (c) to wit:

KRS 337.505 (1) The basic hourly rate paid or being paid subsequent to the executive director's most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed (Louisville/Jefferson County); such rate shall be determined by the executive director in accordance with paragraphs (a), (b), and (c) of subsection (3) of KRS 337.520; in the event that there is not a majority paid at the same rate, then the basic hourly rate of pay shall be the average basic hourly rate which shall be determined by adding the basic hourly rates paid to all workers in the classification and dividing by the total number of such workers.

KRS 337.520 (3) The executive director shall have the authority to determine schedules and current revisions of the rates of prevailing wages as defined in KRS 337.505 but in no case shall the executive director determine wages to paid for a legal day's work to laborers, workmen and mechanics engaged in the construction of public works at less than the prevailing wages paid in the localities (Louisville/Jefferson County). The executive director, in determining what rates of wages prevail, shall consider the following criteria:

- (1) Wage rates paid on previous public works constructed in the localities (Louisville/Jefferson County). In considering the rates, the executive director shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the location, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
- (2) Wage rates previously paid on reasonably comparable private construction projects constructed in the localities (Louisville/Jefferson County). In considering the rates the executive director shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the location, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
- (3) Collective bargaining agreements or understandings between bona fide organizations of labor and their employers located in the Commonwealth of Kentucky which agreements apply or pertain to the localities (Louisville/Jefferson County) in which the public works are to be constructed.

TAXPAYER SUBSIDIZED PROJECTS: Any construction project located in Louisville Metro approved by the Commonwealth of Kentucky for a Tax Increment Financing (TIF) District pursuant to KRS 154.30-050 or KRS 154.30-060 or having a cost exceeding \$20,000,000 and receiving at least 25% of its funding from Louisville Metro.

For purposes of this section, in the determination of project cost, a project cannot be divided into component parts or separate projects unless the projects are conceptually separate and unrelated to each other, or encompass independent and unrelated needs of Louisville Metro.

Work performed as Tenant Finish shall be exempt from the provisions of this section. Further, tax credits or tax reductions provided by Federal, State or City employment incentive programs (e.g., the Kentucky Jobs Development Act, KDFA, KIDA) that are based on the payroll related to new jobs and tax abatements and benefits derived from Industrial Revenue Bonds, are exempt from the provisions of this section.

TENANT FINISH: Any leasehold finish or remodeling work that is performed or contracted directly by tenants occupying all or part of a Covered Structure, or that is performed at the direction of the tenants.

B. FAIR LABOR STANDARDS

Taxpayer Subsidized Projects in Louisville Metro shall receive such assistance only if the Developer certifies that the Taxpayer Subsidized Project shall comply with the following minimum fair labor standards established by the Metro Council. The failure to meet the goals set forth in the following paragraphs (1), (4), and (5) may result in the Developer being ineligible for other Taxpayer Subsidized Projects.

(1) The payment of prevailing wages, as established for each profession or trade used on the Taxpayer Subsidized Project pursuant to applicable Kentucky Revised Statutes and based on wage rates paid on previous public and private construction projects as submitted to the Kentucky Department of Labor by contractors and subcontractors operating in Louisville Metro.

(2) A measurable and documented goal of at least 20% minority participation, including minorities and certified minority owned businesses, for all employees and contractors employed on the Taxpayer Subsidized Project.

(3) A measurable and documented goal of at least 5% women participation, including females and certified female owned businesses, for employees and contractors employed on the Taxpayer Subsidized Project.

(4) Employment opportunities for both union and non-union employees and contractors.

(5) A measurable and documented goal that at least 75% of the Taxpayer Subsidized Project jobs are given to residents of the entire county of all counties within the Louisville MSA.

(6) Participation by all Taxpayer Subsidized Project contractors in training programs (recognized by the US Department of Labor and/or State or

other accrediting organizations) for employees in their respective professions or trades.

(7) Adherence to a zero tolerance drug policy with respect to alcohol and illicit drug use.

(8) Opportunities provided by Taxpayer Subsidized Project contractors for all workers to have access to a health benefit plan.

(9) Verification of the work status of all employees through the E-Verify Program operated jointly by the U.S. Department of Homeland Security and the Social Security Administration or any similar successor program.

C. COMPLIANCE AND MAINTENANCE OF RECORDS

(1) Every Developer of a Taxpayer Subsidized Projects shall require all contractors and subcontractors employed on a Taxpayer Subsidized Project to keep full and accurate records covering all disbursements of wages to their employees to whom they are required to pay at least prevailing wages. Such records shall indicate the hours worked each day by each employee for his or her work in each classification. They shall be open to the inspection of and copying by an authorized representative of Louisville Metro at any reasonable time, and shall be in compliance with all regulations issued by Louisville Metro. Records produced for inspection under this section shall be submitted with a certification by the Developer, under oath, that the records tendered are accurate. These payroll records and certifications shall be maintained by Louisville Metro for one year following the completion of the Taxpayer Subsidized Project. Records

maintained by Louisville Metro shall be subject to all terms of the Kentucky Open Records Act.

(2) The Developer of a Taxpayer Subsidized Project shall require each contractor and subcontractor employed on the Taxpayer Subsidized Project to post and keep posted in a conspicuous place or places at the site of the construction work a copy or copies of prevailing rate of wages and working hours, showing the rates of wages prescribed and the working hours for each class of laborers, workers, and mechanics employed by him or her in the work of constructing the Taxpayer Subsidized Project.

(3) Each Developer of a Taxpayer Subsidized Project shall provide a sworn affidavit to the Executive Director of the Human Relations Commission certifying its good faith efforts to achieve the goals established by this ordinance to utilize minorities, certified minority owned businesses, females, certified female owned businesses, and local residents.

(4) The Human Relations Commission either directly or through a contract with an organization or organizations shall assist contractors and subcontractors employed on a Taxpayer Subsidized Project with the recruitment of minority and female members of the workforce, assist in the training of those individuals recruited by the Commission or its designee, and provide verification and concurrent monitoring of the level of participation of minorities and female members of the workforce and minority and female owned businesses on the respective projects.

(5) (a) The Human Relations Commission shall forthwith initiate a study to determine whether or not the use of goals as a means of increasing employment opportunities for women and minorities, and for women and minority owned businesses, has been effective to carry out the legislative intent of the Metro Council in enacting such measures in connection with the expenditure of public funds.

(b) The study shall be limited to the entire county of all counties within the Louisville MSA and shall take into account all publicly funded contracts for procurement of goods or services, or for construction projects, whether federal, state, or local.

(c) The Human Relations Commission may contract with other qualified public or private organizations or individuals to assist with the study.

(d) The study may include recommendations to the Metro Council.

(e) The completed study shall be filed with the Clerk of the Metro Council, with a copy to the Mayor.

D. PENALTIES A Developer of a Taxpayer Subsidized Project may be disqualified for a period not to exceed ten (10) years from any subsequent Taxpayer Subsidized Project if it is determined that such Developer willfully failed to make a good faith effort to satisfy the requirements of this section.

E. SEVERABILITY If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does

not affect other provisions that can be given effect without the invalid provision or application.

SECTION II: EFFECTIVE DATE This ordinance shall take effect upon its passage and approval. This ordinance shall pertain to construction project agreements established after its effective date.

Kathleen J. Herron
Metro Council Clerk

David W. Tandy
President of the Council

Jerry E. Abramson
Mayor

Approved: _____
Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

Fair Labor Standards – Refiling – 13 July 2009 – roc/wtw